To Hampton Residents from City Manager Mary Bunting

Over the last several months, there have been media reports about a Hampton Police Division undercover operation that focused on illegal trafficking of cigarettes. There have been implications that this was a "failed operation" in which \$3 million of funds were spent and that the funds were not properly used in the interest of Hampton taxpayers. These suggestions do not accurately or fully portray the operation.

Today I would like to review some key facts about the operation, discuss transparency and the release of information, present the results of the city's internal investigation, share lessons learned and recommendations, and then discuss next steps.

These are the verified facts:

- The operation was started in June 2010, when federal officials approached the Hampton Police Division and asked the department to participate.
- The money for the operation came from the proceeds of cigarette operations in other jurisdictions involving the ATF, not from local revenues.
- Hampton police officers suspected the lead ATF agent of criminal activity and turned information over to the ATF. Hampton officers helped gather evidence used to charge him.
- While this was going on, the operation continued.
- Meetings between the Hampton police and the ATF to determine the future of the operation continued through Feb. 3, 2011.
- After it was clear that the ATF pulled out of the operation, Hampton's former Police Chief Chuck Jordan and former Commonwealth's Attorney Linda Curtis signed a memorandum of understanding in February and March 2011 stating that churning was authorized and providing for state level prosecution of cases.
- Jordan halted the operation when a newly assigned officer alleged violation of city policy governing travel spending.
- Jordan asked the State Police for an external investigation to determine if crimes were committed. It did not result in any charges but found that there was no documentation of how approximately \$8,000 in travel/investigative funds were spent.
- Jordan then ordered an Internal Affairs investigation to determine whether city or department policies were violated.

All this had already happened when the Daily Press "broke" the story August 2nd of this year. Hampton officials were seeking the facts to ensure accountability six months before the media inquiries but had not yet received any investigative reports.

Transparency and Public Information

The Daily Press submitted a detailed list of questions about the undercover operation. Staff's first inclination was to not answer any of those questions until the internal investigation concluded. However, the Daily Press asserted that we were not being transparent with the public and argued that there had to be some information that could be shared. In the interest of transparency, I asked HPD staff to provide me with the information that could be released without compromising the investigation. It should be noted that this went against past practice, but we opted to share what HPD provided because the Daily Press insisted on pushing forward with the stories prior to the completion of the investigation, with or without our input.

In retrospect, this was a mistake – a mistake borne out of a desire to be transparent but nevertheless a decision not in the public's best interest. Here's why: When we decided to release what we could, we relied on information provided by HPD that officials believed to be true but which had not been substantiated through investigation. As an example, it was believed that "an audit" had been conducted when we later learned that what was represented by those involved as "an audit" was instead a review by an external accounting firm of Quick Books accounting records. Upon the discovery of this misuse of the word "audit," we immediately updated Council and the media.

This mistake led some to question our veracity and – ironically – our willingness to be transparent. So here is the crux of the challenge: If we hold off releasing information, we are told we are not forthcoming enough, but if we share partial or unconfirmed details before a thorough investigation is completed, we run the risk of providing inaccurate or incomplete information and then are labeled as not being transparent.

Thereafter, I made an executive decision not to release any more information to media outlets until such information could be fully documented. Although this led to several stories about City staff not answering questions, I felt this was preferable to sharing information that could later turn out to be incomplete or possibly in error.

I made a statement to the public about a month ago that I would release information from an internal investigation once it was complete – that we would be transparent at the appropriate time. I also ordered further reviews, including a thorough external financial review of the books and an external auditor examination of the policy development, enforcement, oversight and management of the operation (a more broad review that the internal investigation was commissioned to examine). The City Attorney and I also asked the Attorney General's Office to provide guidance on the legal basis of the operation and the status of the funds involved in it.

I am pleased to share today the findings of the first of those reviews – the internal investigation.

Key Findings from the City's Internal Investigation

The investigation was moved from the Police Division's Internal Affairs office. I appointed a special investigator who reported directly to my office. After reading that report, I can summarize these key findings:

- The policies and procedures used in this undercover investigation were copied from another jurisdiction in Virginia that had set up a similar churning investigation. This policy did not address the need to document the use of travel/investigative funds. However, other HPD policies require such documentation and should have been followed. The State Police found the amount of undocumented travel/investigative funds to be approximately \$8,000.
- All travel was for legitimate law-enforcement purposes. However, there
 are questionable expenses, such as costly meals on training trips. The
 more expensive meals might have been reasonable and necessary for
 trips that involved dealings with targeted suspects.
- There were lax practices in terms of financial accountability for an operation involving so much money. The majority of money that flowed in and out of the account was for the purchase/sale of cigarettes.
 Nevertheless, there was insufficient HPD oversight of necessary operational and administrative details. Unspent travel/investigative funds were not collected. The typical records required to be kept in undercover operations by HPD policy were not kept in this operation.
- The churning account was not frozen when the operation was halted. Expenses for the undercover operation, mostly utilities, continued to be charged against the account. These have since been canceled. In addition, the City is making every effort to terminate any remaining contracted services; however, this is hampered in a few instances due to vendors' termination policies.

A detailed list of findings is available on our website.

Lessons Learned and Recommendations by the City Manager

I was shocked by the failure of those involved in this operation to follow normal HPD practices. There was insufficient oversight of the operation by HPD, especially given the novelty of the operation. Standard HPD practices for undercover operations were not followed. While this may be because the policies for this operation were copied from another similar Virginia- based operation, it does not excuse this operation from the normally high HPD standards. As such, there are several important lessons learned and recommendations that follow from them.

- 1. The City Manager directs that there shall be no further churning operations conducted by HPD alone unless and until such time as there is a clear legal determination of local government churning authority. Even then, if there is ever a need for a churning operation to be conducted, the need must be specifically demonstrated in writing to the City Manager who in turn will require prior and continued consultation with assigned staff of the City Attorney's Office. The Manager will also require a financial accountant be assigned to provide necessary support. All official agreements governing these operations should be reviewed by the City Attorney prior to execution, fully executed and a copy filed with the City Attorney's Office.
- 2. Specific written policies must be developed to outline specific criteria regarding the spending of churned funds, specifically to address what is considered or not considered "reasonable and necessary" to further the investigation.
- Any such operation shall be expected to follow city procurement ordinances, without regard to the source of funds, and generally accepted accounting principles.
- 4. Officers involved shall be expected to follow all existing city and HPD rules and regulations unless specifically exempted in writing by the Chief of Police with appropriate justification.

Next Steps

While the internal investigation report has brought to close one aspect of our review of this undercover operation, there are several more steps to be completed. The financial review will provide a much more detailed accounting of the funds spent in this operation, and the external review will answer broader questions about the genesis of the operation and the decisions made to continue with it once the ATF pulled out.

Closing Thoughts

Over the last several months, I have gone through many thoughts about this operation and the media attention to it. On one level, I feel as if there has been way too much attention to one operation. Our Hampton Police Division is a strong department – our crime statistics have continued to fall over time while our clearance rates (the successful apprehension of suspects) have remained exceedingly high, and we have done this without significantly more manpower. This one case does not negate this great work that HPD does on our behalf each and every day – the great works that are never detailed in the same way by the newspaper or other media outlets.

While the operation was not operated perfectly (as noted above) and there were many things that should have been done differently, it was nevertheless entered into for legitimate law enforcement purposes. The sale of illegal and untaxed cigarettes nets big money and big money inevitably invites a violent criminal element. One tractor-trailer load of cigarettes sold in New York can bring over \$4 million in profit to those engaged in the illegal enterprise. The Virginia Crime Commission has documented this. In undertaking this operation, the HPD was working on an emerging crime trend that threatens not only our residents but those all throughout the region as well.

That said, as much as I believe there has been too much focus on this one operation, I do believe that things happen for a reason. It is my hope that the public will learn through this process that we are an accountable organization — that we apply appropriate levels of scrutiny to ourselves when necessary and that we are committed to constant improvement. No organization or individual is perfect. We cannot expect our public organizations or those who serve in them to never make mistakes. What we can expect — and do here in Hampton — is that we conduct ourselves with integrity, transparency at the appropriate times and with a willingness to learn from our mistakes when they do occur.